

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
FINGERMOTION, INC.,

Plaintiff,

-v-

CAPYBARA RESEARCH *et al.*,

Defendants.
-----X

23 Civ. 9212 (JPC) (KHP)

ORDER

JOHN P. CRONAN, United States District Judge:


Plaintiff filed a motion for default judgment against Defendant Capybara Research on December 27, 2023. Dkts. 28-32. Since then, Plaintiff amended its Complaint to, *inter alia*, add Igor Appelboom as a defendant. Dkt. 34. On January 8, 2024, in her order allowing that amendment, the Honorable Katharine H. Parker, to whom this case is referred for general pretrial supervision, also ordered that Plaintiff must first attempt to obtain Appelboom's waiver of service and attempt service through Brazil's Central Authority pursuant to the Hague Convention. Dkt. 33 at 6. It appears from the docket that no summons has been sought or obtained as to Appelboom.

By May 8, 2024, Plaintiff shall file a letter of no longer than three pages advising the Court as to what efforts have been made to effect service on Appelboom in accordance with Judge Parker's January 8 order, including whether a summons for Appelboom has been sought and obtained from the Clerk of the Court and whether Plaintiff has made contact with Appelboom via email to seek waiver of service as discussed in Judge Parker's order. Plaintiff should also address why this Court should not deny the motion for default judgment as to Capybara Research without prejudice to renewal after Plaintiff's claims against Appelboom are resolved—or, if appropriate, without prejudice to a motion for default judgment against both Defendants if Appelboom fails to

appear after service—given the preference to proceed in this manner to avoid inconsistent findings of liability. *See City of Almaty v. Sater*, No. 19 Civ. 2645 (AJN), 2021 WL 4340541, at *1 (S.D.N.Y. Sept. 23, 2021) (“Default judgment cannot be issued where the relief requested would prejudice actively litigating defendants. The key inquiry is whether the default judgment could result in inconsistent outcomes for similarly situated defendants.” (cleaned up)).

SO ORDERED.

Dated: April 24, 2024
New York, New York



JOHN P. CRONAN
United States District Judge